

In the United States District Court
for the
Eastern District of Pennsylvania

Rajan Patel vs. ECFMG (Educational Commission For Foreign Medical Graduates)

Case Number: 2:21-cv-00546-NIQA

Date: 9/3/2021

Lawsuit initially filed: February 4th 2021

The Amended Complaint

This complaint and exhibit replaces page six of the case documents, which is titled “Statement of Claim and Relief.”

Amended Statement of Claim and Relief:

The ECFMG (Educational Commission for Foreign Medical Graduates) gives students seven years to complete the USMLE exams in order to become ECFMG certified. I am such a student that has one more exam left to take and pass in order to be certified by the ECFMG. My seven years were up at the end of June of 2020. Before the Covid-19 Pandemic, we were able to take the exam on almost any day of the year that we wish, as long as we have an active scheduling permit issued by the ECFMG. However, during the timeframe of April-May-June-July 2020, though I had an active scheduling permit to take the exam, I was not able to take my exam because the test centers (called Prometric) were closed; and when they reopened, they required test takers to wear a complete mouth and nose covering (a face mask) for the entire length of the exam (nine full hours). Prometric’s requirement of wearing a mask is reasonable as it is important to protect our communities and societies from the Coronavirus. However, I really am unable to wear a mask for the length of this exam, as my Pulmonologist at Johns Hopkins Medicine, Dr. Holden, has strictly recommended me NOT to wear a mask for that long because wearing a mask puts me in a dangerous situation healthwise, as I have a form of Asthma that causes dangerous levels of shortness of breath when wearing a mask for a prolonged time-frame. I have all medical documentation required to show evidence of these statements, and I would present such evidence during the appropriate phases of this civil action. My Pulmonologist confers that wearing a mask for extended periods of time significantly affects my safety, wellbeing and ability to breathe normally. I have asked the Prometric Test Centers if they can provide me with an accommodation (ADA- Reasonable accommodation) whereby I am allowed to take the test in a separate room without a mask, or some other way of allowing me to take the exam safely without wearing a mask (as an ADA Reasonable Accommodation due to

my disability that is impairing me from take the exam under the normal but new policies with regards to wearing masks). Prometric initially said no and suggested that I should wait until after the pandemic is over and they go back to allowing test takers to take the exam without wearing a mask. Their reason for this was that it would be unreasonable to provide me this accommodation when it can affect the health and safety of thousands of other people. I then explained my situation to Prometric and told them how it is time sensitive for me to take this exam and that my seven years are coming to an end with ECFMG's Seven Year Rule. Prometric then stated to me that it would allow me to take the exam without wearing a mask (as an accommodation) if I can provide them proof of certainty that ECFMG says that it will waive and extend temporarily, their seven year window for me (because by the time the testing centers were back to near full function capacity of scheduling, booking, and testing, my seven years had just passed - June 30 2020). This is a reasonable request by Prometric as they require a compelling reason and proof of that reason (eg. in this case ECFMG's seven years coming to an end for me), in order to provide me with an accommodation that could put their clients, test-takers, and employees at a health risk. Starting September 1st 2020 Prometric started giving consideration to extremely extenuating circumstances with regards to requiring the wearing of masks. Before September 1st 2020, but after the reopening of the test centers in 2020, there was absolutely no option of requesting for an accommodation that allows one to take a test without wearing a mask. This policy is reasonable of Prometric per the Americans with Disabilities Act, Sec. 12182. Prohibition of discrimination by public accommodations, which states:

"Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services." This law statute can be applied to the scenario of allowing people to take an exam without wearing masks can lead to a big health threat to the public. In one correspondence with the ECFMG, ECFMG had stated to me that it suggests I file a legal action against Prometric for failing to accommodate, rather than requesting ECFMG to alter its policies. My response to that is: Prometric has not denied me a reasonable accommodation, they have just made their criteria very strict on how people can attain that accommodation, as that accommodation (able to take an exam without wearing a mask) involves putting the health of others at risk. It is not unreasonable of Prometric to request this additional letter in order for it to grant a Reasonable Accommodation. In fact, under the above law I cited, it would be reasonable for Prometric to even deny an accommodation that puts the health of others in the public at risk. In my case, Prometric is willing to accommodate, but seeks a letter from the certifying entity that issues us the scheduling permit to take the exam at Prometric centers, and in my case that entity is the ECFMG. Prometric has not completely denied me an accommodation, they are working with me, but keeping the bar high- eg. them requiring a very compelling reason such as the candidate showing a timeline urgency supported by the certifying entity that issues the scheduling permit, in my case ECFMG. Prometric has stated that ECFMG would have to issue a letter that states that I have an upcoming deadline by which I need to complete the exam in

order to be certified by the ECFMG.{ Prometric has stated that the timeframe of “upcoming” can be between 1-18 months from now (from the date on the letter). ECFMG can easily show this timeline urgency by providing a determination on my request for a 7 year extension NOW rather than making me wait until after I pass the exam (which is actually impossible because I can not even take the exam under current policies at prometric that require wearing mask). The only way Prometric will let me take the exam is if my educational certifying body (the body that issues my scheduling permit that allows me to take the exam at Prometric) writes a letter showing how urgent it is for me to pass the exam for the purposes of certification. This letter needs to identify a specific date that is in the near future from now (1-18 months from the date on the letter), by which I need to complete my usmle step 2 ck exam in order to meet the timeline requirement for certification by that same body that issues the scheduling permit- eg. ECFMG in this case. Prometric will only grant this accommodation if the ECFMG issues a letter that shows I have a timeline urgency with regards to certification deadlines and such. Only in that case, will Prometric grant me an accommodation that allows me to take the exam without a mask. Prometric’s reasoning behind this is so that I do not miss out on an opportunity to become certified by missing the deadline/due date/window of time. Note: All of these alleged statements are documented by my back and forth letters between ECFMG and myself, along with Prometric and myself.

I then immediately approached ECFMG, asking them to provide me in writing that they would indeed extend my seven years, so that I can take the exam with the accommodation that I need at Prometric. I asked ECFMG to make a determination now rather than later (as an accommodation- which means reasonably altering a policy to make services accessible to disabled clients/students) because this accommodation can potentially allow me to access the exam (given ECFMG does grant the seven year window extension). ECFMG finally responded in January 2021 stating that it would not provide me this type of letter nor would it consider providing me an extension of the seven years until I take my remaining exam and pass it. ECFMG further stated that it denies my request for this accommodation. ECFMG also stated that it might finally make me retake my first exam that is out of the seven year time frame in order to deem me eligible for certification. Note that making me retake an exam that I worked so hard to pass in the first place, along with the fact that I would have been done (with a passing result) with this last exam as well within the seven year window if the pandemic did not occur, test centers did not close, and if masks were not required to be worn, is utterly unjust. This is and should be a valid reason to allow an exception and extension of the seven year window by ECFMG. However, ECFMG refused to provide me with this extension and said it would only consider it AFTER I finish and pass the remaining exam, despite it knowing that I can not physically take or pass the exam until I am granted this disability related accommodation. It would be a reasonable accommodation for ECFMG to grant an extension PRIOR to me finishing the exam, instead of waiting until AFTER I am finished with the exam (as it does under its normal protocol), especially since it is really needed in this situation. A reasonable accommodation is a change made to established normal protocols and policies in order to provide accessibility and fairness to a person who is disabled, where the disability is impairing the person’s accessibility/fairness. My medical condition is indeed covered under the ADA as a

recognized disability. ECFMG also stated several times in communication with me that they “encourage me to take the exam under current protocols and standards at the testing center (implying I wear a mask), instead of me trying to ask ECFMG of these types of requests.” This is almost a taunt to a person who is disabled/has a medical condition, who truly can not take the exam due to health reasons related to wearing a mask. Given this unprecedented nature of the pandemic, educational organizations are to grant accommodations when needed and appropriate (both under the ADA law and other Pandemic related laws and executive orders). In this case it is appropriate and necessary for the ECFMG to extend my seven year window, as it is a procedural requirement by the test center in order for it to allow me to take the exam with the disability related reasonable accommodation that I need (eg. not wearing a mask). ECFMG and Prometric work together to allow students to take the USMLE exams. Prometric did its part in providing a reasonable guideline to receiving an accommodation, but ECFMG is not doing its part in providing a definitive communication and statement that it will provide me an extension of the seven years. Its failing to provide this statement to me now, is causing me to be unable to take the USMLE exam at the Prometric center, in turn directly hindering my progress in my career as a physician. Without taking the USMLE exams and becoming ECFMG certified, there is absolutely no way one can even begin training as a physician. This is similar to the BAR exam that lawyers have to pass in order to be licensed by the state as an Attorney. I need to provide Prometric the compelling reason that I have an upcoming time deadline to pass this last exam in order to be ECFMG certified. ECFMG needs to give me such a deadline so that I can provide it to Prometric. If it does not, I will be unable to receive the accommodation from Prometric (to take the test without wearing a mask). ECFMG is failing to provide me with such a deadline (as part of an accommodation request I made to the ECFMG). ECFMG states that providing me with such a deadline would mean it agrees to provide me an extension to the seven year window prior to me passing the last exam, which it does not agree to do. This failure to provide me this new deadline as a reasonable accommodation is ECFMG’s breach of law and is the reason I am suffering the loss of not being able to take the last USMLE exam and hence not being able to continue on my path of becoming a physician. It is wasting valuable time and the longer we wait, the more difficult it will be for me to explain this time gap to future training programs and employers. This field is competitive as it is and this is making my competition and difficulty even steeper (for a completely unfair/unjust reason). These are real losses and damages that I am suffering as a result of ECFMG’s denial and refusal to accommodate. A fair relief would involve paying me back the recent exam fee I had to pay to extend my eligibility period, AND more importantly, providing me with this much needed “new deadline” and “extension” that I need to show Prometric, in order for me to get the accommodation from Prometric to take the exam without a mask. ECFMG extended all test takers’ scheduling permits (during the pandemic) by 18 months, which was unprecedented, yet it can not agree to extend my seven year window, which seems quite unjust and unreasonable, especially since this is needed as an accommodation in order for me to access the exam. This accommodation will allow me to take and pass my exam before the new deadline is up and hence be ECFMG certified in a timely manner, and then be able to progress in my career as a physician, seeking training programs and employment. If I do not receive this accommodation from ECFMG, I will not be able to be ECFMG certified under the current situation with the pandemic and hence will

not be able to embark on my career as a physician, for which I have worked so hard to reach this final stage. Given the nature of this issue, and given the fact that I have paid ECFMG thousands of dollars in fees already, it is ECFMG's responsibility to make adjustments to their policy when necessary and appropriate under law (eg. ADA law). In the ADA Title III: Public Accommodations section, it states: "Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered." In this case, it is absolutely appropriate for ECFMG to NOW grant me a definitive written statement of extension of the seven years, and a new extended deadline so that I can take my exam. All other students under normal circumstances received their seven full years if they wished, but I did not, as during the last several months/weeks of my seven years, ALL Prometric test centers were closed due to the pandemic. Hence extending the seven years for people like me, is warranted and the only fair way to compensate for the lost time. Furthermore, due to my medical condition, I am unable to test until the test center allows me to take the exam without a mask, and currently, they will only do that if they have a compelling written statement from ECFMG establishing a new reasonable upcoming deadline by which I need to take the exam in order to meet the ECFMG certification needs (eg. seven year rule). ECFMG's refusal to do this and them adamantly sticking to their current notion that they provide considerations of extension only AFTER all exams have been passed, is essentially them not providing me with the reasonable accommodation that I need to be able to take and access this exam, and thus is their breach of the ADA law, among other laws. ECFMG's current policy of assessing whether it will or will not extend the seven year window ONLY AFTER the last exam has been passed, hinders my accessibility to this USMLE exam, as I am unable to take the exam and pass it BEFORE it grants me the extension. I am physically unable to do so, due to a physical disability mentioned above (Asthma). I can not take this exam with a mask on, and Prometric will allow me to sit in their test center to take the exam without a mask ONLY IF ECFMG provides such a statement of extension with a new deadline by which I need to take and pass the USMLE step 2 ck exam. Hence, I need ECFMG to provide a reasonable accommodation so that I can access this exam. ECFMG has refused to provide such reasonable accommodation, therefore has breached ADA law and perhaps other laws (related to the Pandemic this year and last year). I am still requesting that ECFMG grant me this accommodation as part of the relief that I am seeking in this civil action. I also seek the relief of monetary compensation for paid time loss as a direct result of ECFMG failing to accommodate per ADA law. If I was granted this accommodation when I sought it, I would have taken and passed the exam shortly thereafter and could have progressed on my intended career path as planned. But due to ECFMG failing to accommodate, I have yet to take the exam, and thus have not been able to progress at all on my professional medical career path, as passage of this exam is a strict requirement to engage in any further medical training/licensure. I have lost close to one year in my medical career path. I also seek a free extension on my current USMLE step 2 ck scheduling permit as my scheduling permit has not been usable to take the exam due to the fact that ECFMG has not granted this disability accommodation of making a determination on the seven year window extension request prior to me taking and passing the USMLE step 2 ck.

NOTE: On a side note, with respect to ECFMG giving me consideration of extension to its seven year rule, I would like to assert that under the Equal Educational Opportunities Act, all students/candidates should be given an equal amount of accessible time (eg. full seven years) to take the USMLE exams. I was not given the full seven years, as shortly after the Pandemic struck, (in March 2020), Prometric centers were closed worldwide. Hence, my seven years were cut by several months, and ECFMG should understand this and provide me with a reasonable extension on this time like it did on all of our scheduling permits and like State Government Physician Boards did with respect to their own seven year rules on physician applicants for licensure. My seven years with ECFMG to take my USMLE exams were not fully accessible seven years (I and hundreds of others were not able to test on and after March of 2020 due to widespread shutdown of Prometric centers). As such, ECFMG should give us a reasonable extension. If ECFMG gives me this extension, I will likely be able to take the exam and pass it within maximum 2-3 months after it issuing the letter granting me an extension of the seven years. If it does not issue me such a letter, I will likely never be able to test, unless Prometric removes its mask policy (which it doesn't seem like it will do anytime soon, as the Pandemic is still a big health concern).

Summary

I, Rajan Patel, am a registered test-taker of the USMLE step 2 ck exam. For International Medical Graduates, like myself, the USMLE exam is only administered through a Philadelphia based organization called the Educational Commission for Foreign Medical Graduates (ECFMG). This lawsuit is against ECFMG for refusing to provide me with a reasonable accommodation that I need in order to access and take the USMLE exam (the refusal is clear in its email to me). The exam is to be taken at a center that belongs to a company called Prometric. Prometric has stated that it needs a compelling enough reason to grant me the accommodation that I need, which is to be able to take the exam without wearing a mask that covers my mouth and nose (they require masks due to the current pandemic). Prometric has stated that one such example of a compelling reason (in order for it to grant me this accommodation), as it pertains to my situation, is a timeline/deadline related urgency where if I do not take the exam by a certain deadline that is only 0-18 months away, I will not be eligible to be professionally certified (eg. ECFMG certification) without taking and passing further repeat USMLE exams. Prometric requires, in writing, a statement from such a professional organization that would be certifying me eg. from ECFMG. Without this, Prometric has deemed it unreasonable to grant me this accommodation and has stated that I must wait until it removes the policy that requires test takers all over the country to wear a mask (in order for me to take the exam without a mask), for which they do not have an approximate date of occurrence. Without such a letter/statement from ECFMG or similar certifying bodies that engage in my medical education certification process, Prometric has deemed it not to be reasonable to allow me to take an exam without wearing a mask (even if I have Asthma and have been strictly

advised not to by a Pulmonologist) because it puts hundreds of other people who take exams at Prometric, along with staff, at risk amidst this pandemic. Prometric has reasonably stated that they need to maintain strict requirements and criteria in terms of evaluating cases where test-takers request to take their exam without a mask.

I subsequently approached ECFMG, requesting for such a letter that states that if I do not take and pass the USMLE step 2 ck exam within the next 1-18 months, I will not be eligible for ECFMG certification without repeating and passing already taken USMLE exam(s). ECFMG has stated to me that in order for it to issue me any letter that states a deadline is approaching by which I need to take the exam in order to be certified without repeat exams, it would first need to extend my seven year window to take the exam without any repeat exams necessary. ECFMG stated in writing to me that it will only consider extending my seven year window AFTER I pass this last exam that is remaining for me to take. ECFMG stated that in its consideration process (after I complete this remaining exam and pass it), it will take into account the reason for which I am requesting this extension of the seven year window. I have requested and am still requesting that ECFMG gives me a reasonable disability accommodation (a slight adjustment in its policy and process), whereby it considers extending my seven year window now rather than doing so AFTER I take the exam, as without such determination NOW, I can't even take the exam (per Prometric's determination/decision). Prometric has outlined a viable/reasonable method by which I can attain the needful accommodation through Prometric, but it involves ECFMG to also do its part by cooperating and providing such type of letter and determination that it will now grant me an extension to the seven year rule established by ECFMG, along with issuing a reasonable deadline by which I need to take and pass the remaining USMLE step 2 ck exam to avoid needing a retake on any passed USMLE exam for the purposes of ECFMG certification. This is an accommodation that ECFMG needed to and still needs to provide me in order for me to be able to take the accommodation that Prometric has offered. This accommodation that I have requested is reasonable and should have been provided by ECFMG per the Americans with Disabilities Act law. ECFMG needed to and still needs to issue a letter with a reasonable deadline (with a date in the near future, such as between 1-18 months from now) by which I must take the USMLE step 2 ck exam in order to avoid retaking any USMLE exams for ECFMG certification purposes. ECFMG refused and still refuses to provide this accommodation, and I am still requesting that ECFMG grant me this accommodation as part of the relief that I am seeking in this civil action. I also seek the relief of monetary compensation for paid time loss as a direct result of ECFMG failing to accommodate per ADA law. If I was granted this accommodation when I sought it, I would have taken and passed the exam shortly thereafter and could have progressed on my intended career path as planned. But due to ECFMG failing to accommodate, I have yet to take the exam, and thus have not been able to progress at all on my professional medical career path, as passage of this exam is a strict requirement to engage in any further medical training/licensure. I have lost close to one year in my medical career path. I also seek a free extension on my current USMLE step 2 ck scheduling permit as my scheduling permit has not been usable to take the exam due to the fact that ECFMG has not granted this disability accommodation of making a determination on the seven year window extension request prior to me taking and passing the USMLE step 2 ck.

Sincerely,

Rajan Patel

/s/ (electronically signed)